

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FERNANDO GUIZAR,  
Plaintiff,  
v.  
J. WOODFORD, et al.,  
Defendants.

) No. C 05-0557 MMC (PR)  
) **ORDER GRANTING MOTION FOR STAY;  
STAYING CASE; VACATING REFERRAL  
TO PRO SE PRISONER MEDIATION  
PROGRAM; VACATING DEADLINE FOR  
SERVICE OF UNSERVED DEFENDANTS;  
DENYING MOTIONS FOR APPOINTMENT  
OF COUNSEL AND FOR EXTENSION OF  
TIME; INSTRUCTIONS TO CLERK**  
) (Docket Nos. 33, 36, 38)

18 On February 7, 2005, plaintiff, a California prisoner currently incarcerated at  
19 Corcoran State Prison (“Corcoran”) and proceeding pro se, filed the above-titled civil rights  
20 complaint pursuant to 42 U.S.C. § 1983. In his complaint, plaintiff alleges that prison  
21 officials violated his constitutional rights by placing him in administrative segregation and,  
22 eventually, the secured housing unit (“SHU”) after he was validated as a gang associate. On  
23 July 26, 2005, the Court found the complaint, liberally construed, stated cognizable claims,  
24 and ordered the complaint served upon twelve defendants.<sup>1</sup>

25 The United States Marshal (“Marshal”) successfully served seven defendants (“the  
26 served defendants”), who jointly filed a motion for summary judgment. By order filed

<sup>28</sup> <sup>1</sup>Claims against two other defendants, J. Marshall and H. McEnroe, were dismissed for failure to state a cognizable claim for relief.

1 March 27, 2007, the Court denied the motion for summary judgment, finding, inter alia, that  
2 defendants are not entitled to qualified immunity. With respect to the five unserved  
3 defendants, specifically, Coziah, Basso, Wohlwend, Pottieger and James, the order provided  
4 that if plaintiff failed to either effectuate service upon them or provide the Court with their  
5 accurate current location within 30 days, plaintiff's claims against said defendants would be  
6 dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.  
7 Additionally, by said order, the Court referred the case to Magistrate Judge Nandor Vadas for  
8 the purpose of conducting, within 45 days, mediation proceedings pursuant to the Pro Se  
9 Prisoner Mediation Program. Thereafter, on April 24, 2007, the served defendants filed a  
10 notice of appeal of the Court's March 27, 2007 order denying their motion for summary  
11 judgment as to the issue of qualified immunity.

12 Now before the Court are several motions, which the Court addresses below in the  
13 order of their filing.

14 1. On April 4, 2007, plaintiff filed a motion for appointment of counsel. Plaintiff's  
15 motion is hereby DENIED as there are no exceptional circumstances warranting such  
16 appointment. See Lassiter v. Dep't of Social Services, 452 U.S. 18, 25 (1981) (finding no  
17 constitutional right to counsel in civil case).

18 2. Concurrently with their appeal, the served defendants filed a motion to stay all  
19 proceedings in this action pending resolution of the appeal. An order denying a defendant's  
20 motion for summary judgment, although not a final order, nonetheless is immediately  
21 appealable where the defendant is a public official asserting a qualified immunity defense  
22 and the issue on appeal is whether the undisputed facts show a violation of "clearly  
23 established law" as defined for purposes of such defense. Mitchell v. Forsyth, 472 U.S. 511,  
24 528 (1985). Once a notice of appeal is filed, the district court loses jurisdiction over the  
25 matters that are the subject of the appeal. Natural Res. Def. Council, Inc. v. Southwest  
26 Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001). Here, in light of the matters affected by  
27 the served defendants' appeal of the March 27, 2007 order, good cause exists to stay all  
28 proceedings before this Court until such appeal is resolved.

1       Accordingly, defendant' motion to stay is hereby GRANTED. All proceedings in the  
2 above-titled matter are hereby STAYED until the United States Court of Appeals issues its  
3 mandate with respect to its decision on defendants' appeal of the March 27, 2007 order. The  
4 referral to the Pro Se Prisoner Mediation Program, as well as the deadline for plaintiff to  
5 serve or provide the location of the unserved defendants, as ordered on March 27, 2007, are  
6 hereby VACATED.

7       3. In light of the stay, plaintiff's motion for an extension of time in which to locate or  
8 serve the unserved defendants is hereby DENIED as moot.

9       This order terminates Docket Nos. 33, 36 and 38.

10      The Clerk shall close the file for administrative purposes pending resolution of the  
11 appeal.

12      IT IS SO ORDERED.

13 DATED: May 2, 2007

  
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MAXINE M. CHESNEY  
United States District Judge

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